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With Compliments of Henry L. Burnett

Military Order of the Loyal Legion of the United States.

SOME INCIDENTS IN THE TRIAL OF
PRESIDENT LINCOLN'S ASSASSINS

THE CONTROVERSY BETWEEN
PRESIDENT JOHNSON AND JUDGE HOLT

BY GEN. HENRY L. BURNETT, LATE U. S. V.



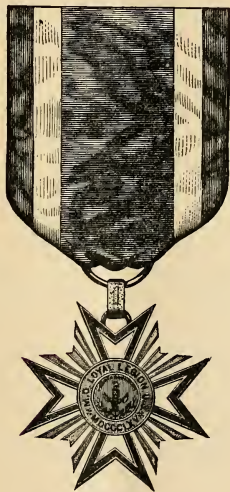
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GENERAL HANCOCK'S RELATION TO THE TRIAL AND EXECUTION OF MRS. SURRETT.

A paper read by GEN HENRY L. BURNETT, late U. S. V., at a Meeting of the Commandery, State of New York, Military Order, Loyal Legion, Dec. 5, 1888.

MY transfer from the line to the staff of the army was an accident, and one which I regarded at the time as a personal misfortune.

I was serving with my regiment on the Cumberland, in the latter part of the year 1863, or the beginning of 1864, when the Judge Advocate on the staff of General Burnside, Major J. Madison Cutts (brother-in-law of the late Senator Douglas) committed an offense for which charges were preferred against him. General Burnside sent inquiries to the front for some officer who was a lawyer and capable of trying his Judge Advocate. I was recommended, and ordered back to Cincinnati, where General Burnside's headquarters then were, he being in command of the Department of the Ohio.

After finishing this case I was kept on court-martial duty at Cincinnati, Lexington, and Louisville for some time; and finally, at request of Governor Morton, in September, 1864, I was ordered to Indiana to act as Judge Advocate of the court detailed to try the members of the "Knights of the Golden Circle" or "Sons of Liberty." These trials were finished some time in December of that year, and I entered almost immediately upon the trial of the Chicago conspirators—St. Leger, Grenfel, and others, you will remember—who had come over from Canada to engage in the enterprise of releasing the rebel prisoners

from Camp Douglas. While making the closing argument in this case on the 17th of April, I received from the Secretary of War the following dispatch :

" WASHINGTON, April 17, 1865.

" COLONEL H. L. BURNETT, *Judge Advocate* :

" Please report in person immediately to this department to aid in the examinations respecting the murder of the President. Acknowledge this telegram.

" EDWIN M. STANTON, *Secretary of War*."

I started for Washington the same evening, reaching there on the morning of the 19th, and was "specially assigned (by the Secretary of War) for duty on the investigation of the murder of President Lincoln and the attempted assassination of Mr. Seward," and a room was assigned to me in the War Department.

The gloom of that journey to Washington, and the feeling of vague terror and sorrow with which I traversed its streets, I can not adequately describe, and shall never forget. To this day I never visit that city without some shadow of that dark time settling down over my spirit. All the public buildings and a large portion of the private houses were heavily draped in black. The people moved about the streets with bowed heads and sorrow-stricken faces, as though some Herod had robbed each home of its first-born. When men spoke to each other in the streets there were tremulous tones in their voices, and a quivering of the lips, as though tears and violent expressions of grief were held back only by great effort. In the faces of those in authority—Cabinet ministers, officers of the army—there was an alert expression of the eye, as though a dagger's gleam in a strange hand was to be expected ; and a pale, determined expression, a set of the jaw that said : " The truth about this conspiracy shall be ascertained, and the assassins found and punished ; we will stand guard, and the Government shall not die."

For no ruler who ever lived, I venture to say, not excepting Washington himself, was the love of the people so

strong, so peculiarly personal and tender, as for Abraham Lincoln. You know what that love was among the soldiers, with what devotion and patriotic affection the boys used to shout and sing, "We are coming, Father Abraham!" and what a personal and confiding sort of relation seemed to exist between the boys and "Uncle Abe," and how those brave soldiers—veterans of four years of terrible war, inured to hardship, to sickness and wounds, familiar with the face of death—wept like little children when told that "Uncle Abe" was dead. The scene at the bedside of the dying President had been described in the press, and, as the news swept round the earth, all the children of men in all the civilized world wept with those about his couch. That death-bed scene will never be forgotten. "It was surrounded by his Cabinet ministers, all of whom were bathed in tears, not excepting Mr. Stanton, the War Secretary, with iron will and nerve, who, when informed by Surgeon-General Barnes that the President could not live until morning, exclaimed: 'Oh, no, General! no, no,' and immediately sat down in a chair at his bedside and wept like a little child."

"Senator Sumner was seated on the right of the President's couch, near the head, holding the right hand of the President in his own. He was sobbing like a woman, with his head bowed down almost to the pillow of the bed on which the President was lying."

At twenty-two minutes past seven the President passed away, and Mr. Stanton exclaimed, "Now he belongs to the ages." Besides the persons named, there were about the death-bed his wife and son, Vice-President Johnson, all the other members of the Cabinet with the exception of Mr. Seward, Generals Halleck, Meigs, Farnsworth, Augur, and Ladd, Rev. Dr. Gurley, Schuyler Colfax, Governor Farwell, Judges Cartter and Otto, Surgeon-General Barnes, Drs. Stone, Crane, and Leale, Major John Hay, and Maunsell B. Field.

When I entered upon the duty of assisting in the investigation of the murder of the President, on the 19th of

April, it must be borne in mind that at that time it was not positively known who had assassinated the President or attempted the life of Secretary Seward; Booth was the alleged assassin—that was all. How wide-spread was the conspiracy or who were in it was not known. There were general apprehension and belief that further assassinations would be attempted, and guards were placed around the private residences of the Cabinet ministers, General Grant's house, and the public buildings; soldiers patrolled the city and were scouring the country. All that was then positively known as to the assassination of the President was that a tall, dark man, apparently about thirty years of age, had forced his way into the President's box at Ford's Theatre on the evening of the 14th, had shot the President; stabbed Major Rathbone who attempted to detain him; had leaped over the front of the box on to the stage below; fled across it, crying, "*Sic semper tyrannis!*"—then out by the right side to the rear door of the theatre; had there mounted a horse, galloped away into the night across the Navy-Yard bridge; that another supposed confederate soon after galloped after and joined him; and nothing more.*

* "The whole performance remains in the memory of those who heard it a vague phantasmagoria, the actors the thinnest of specters. The awful tragedy in the box makes everything else seem pale and unreal. Here were five human beings in a narrow space—the greatest man of his times in the glory of the most stupendous success in our history, the idolized chief of a nation already mighty, with illimitable vistas of grandeur to come; his beloved wife, proud and happy; a pair of betrothed lovers, with all the promise of felicity that youth, social position, and wealth could give them; and this young actor, handsome as Endymion upon Latmus, the pet of his little world. The glitter of fame, happiness, and ease was upon the entire group, but in an instant everything was to be changed with the blinding swiftness of enchantment. Quick death was to come on the central figure of that company—the central figure, we believe, of the great and good men of the century. Over all the rest the blackest fates hovered menacingly—fates from which a mother might pray that kindly death would save her children in their infancy. One was to wander with the stain of murder on his soul, with the curses of a world upon his name, with a price set upon his head, in frightful physical pain, till he died a dog's death in a burning barn; the stricken wife was to pass the rest of her days in melancholy and madness; of those two young lovers, one was to slay the other and then end his life a raving maniac."—NICOLAY AND HAY, *Life of Lincoln*.

That on the same evening about the same hour—ten o'clock—a tall, broad-shouldered man had appeared at the residence of Mr. Seward, Secretary of State, with a package in his hand, saying it was medicine for Mr. Seward from his physician, Dr. Verdi, and that he was sent by Dr. Verdi to direct Mr. Seward how to take it. Mr. Seward had been thrown from his carriage a few days before and his right arm and jaw were fractured, and he was still confined to his bed from these injuries. The colored servant who met him at the door declined to admit the man to Mr. Seward's room; but, against the servant's protest, he pushed on through the hall, up the stairs, and at the top was met by the Secretary's son, Mr. Frederick W. Seward, who opposed his entrance to his father's room. The assassin then turned with the colored man to go down-stairs, but wheeling about suddenly struck Mr. Seward twice on the head with some blunt instrument, fracturing his skull; then rushed for the Secretary's room, was met at the door by Sergeant Robinson, whom he struck with a knife on the forehead, partially knocking him down, then to the bed and stabbed Secretary Seward twice in the side of the face and neck; either in going in or coming out he stabbed another attendant, Mr. Hansell, in the back. Major Augustus H. Seward, another son, who was in an adjoining room asleep, awakened by the noise, hurried into the sick-room, and seeing the assassin struggling with some one on his father's bed, seized him and supposing him to be an attendant who had suddenly become insane, commenced pushing him toward the door; the assassin then struck Major Seward several heavy blows with some blunt instrument on the head. When he reached the hall, the assassin gave a sudden turn, sprang away from Mr. Seward, rushed down the stairs out into the street, mounted a horse and rode away. The same evening a pistol was picked up in the house, and early next morning a large knife was found in the street in front of the house. Nothing further was known of the movements of this man until the night of the 17th, when, at about half-past eleven, while Major Smith was

in charge of Mrs. Surratt's house, No. 541 H Street (he having been sent there to arrest Mrs. Surratt and the other inmates of the house), this man, who thereafter became known as Payne, came to the house, gave a knock, and a ring at the door, and, upon the door being opened, stepped in, with a pick-axe on his shoulder, and inquired for Mrs. Surratt; said he came to dig a gutter or drain for her, had been sent for by her in the morning, etc. Mrs. Surratt denied knowing him. He was then arrested; taken that night to the provost-marshal's office, and was there identified by Secretary Seward's colored waiter as the man who had attempted to assassinate Secretary Seward. Upon being searched a compass was found upon him, and one of his boots was marked "J. W. Booth." On the afternoon of the 14th Booth had called at the Kirkwood House, where Vice-President Johnson was stopping, and left a card on which was written: "Don't wish to disturb you. Are you at home? J. Wilkes Booth." In the evening of the same day a mysterious person had appeared there on horseback, had dismounted and entered. Several persons on the afternoon of the 14th had procured horses at Gardner's livery stable, some of them having been returned early next morning, some of them were never heard of afterward. About one o'clock on the morning of the 15th a horse was found near Lincoln Branch Barracks, about three fourths of a mile from the capital, with saddle and bridle on, and dripping with sweat.

On the evening of the 13th a man appeared at Secretary Stanton's house, where General Grant was that evening; acted in a peculiar manner, asked to have both General Grant and Secretary Stanton pointed out to him, which was done; but did not speak to either of them, and lingered in the hall watching them, and stood about on the front steps until he was driven away. This was the sum of what was actually known on the morning of the 19th.

As I have said before, while it was generally surmised and believed from the time of the assassination that J. Wilkes Booth was the assassin, for some days this rested

only upon the statements of some of the persons at the theatre that they believed it was Booth; they thought they recognized him as he ran across the stage, but could not be certain about it. The first evidence which conclusively established his identity in the minds of those investigating the facts was obtained about the 21st or 22d. It was known that the assassin had injured himself when he jumped from the President's box; that he limped as he ran across the stage; and it was subsequently ascertained that he had broken one bone of his leg. He was traced to Dr. Mudd's house near Bryantown, Maryland, and there, on the 21st, was secured the boot which Dr. Mudd had cut from his leg when he set the bone. On the inside of the leg of this boot was the number of the boot and the name of the maker—some man whose shop was on Broadway in this city, and was marked "J. Wilkes." As soon as the boot was received at the War Department, ex-Marshal Murray was put aboard a special engine and sent to New York to look up the maker and ascertain for whom the boot was made. That night a telegram was received from him saying, "The boot was made for J. Wilkes Booth." This settled the identity of the assassin in our minds beyond a doubt, and this identification was of great service to us in further prosecuting our investigations as to who were the aiders and abettors of the assassin and who were his co-conspirators.

The investigation was prosecuted under the personal direction of the Secretary of War, with earnest diligence, until the day the court was ordered to convene, May 8th. A more indefatigable, tireless worker it has never been my fortune to encounter, either in military or civil life, than Secretary Stanton. Many nights I worked with him until the morning dawn began to steal in at the windows, and many nights when I left the department at midnight or in the small hours of the morning, completely worn out, I left him still working.

Prior to the 1st of May the President, Andrew Johnson, officially called upon the Attorney-General, James

Speed, for an opinion as to whether or not the persons implicated in the murder of the President and the attempted assassination of William H. Seward, Secretary of State, and in an alleged conspiracy to assassinate other officers of the Government, and their aiders and abettors, were lawfully triable before a military commission, and, the Attorney-General having given his opinion in response thereto that said parties were so lawfully triable, on the 1st day of May he, the President, ordered the Adjutant-General to detail nine competent military officers to serve as such commission. On the 6th of May the Adjutant-General, in obedience to this order of the President, issued his order appointing a "military commission to meet at Washington on the 8th day of May for the trial of Herold, Atzerodt, Payne, O'Laughlin, Spangler, Arnold, Mrs. Surratt, Dr. Mudd, and such other prisoners as might be brought before it, implicated in the murder of the late President Abraham Lincoln and the attempted assassination of the Hon. William H. Seward, Secretary of State, and in an alleged conspiracy to assassinate other officers of the Federal Government at Washington City, and their aiders and abettors."

The detail of the court, as finally constituted, consisted of the following officers: Major-General DAVID HUNTER, Major-General LEWIS WALLACE, Brevet Major-General AUGUSTUS V. KAUTZ, Brigadier-General ALBION P. HOWE, Brigadier-General ROBERT S. FOSTER, Brigadier-General T. M. HARRIS, Brevet Brigadier-General JAMES A. EKin, Colonel C. H. TOMPKINS, Lieutenant-Colonel DAVID R. CLENDENIN.

Brigadier-General Joseph Holt, Judge Advocate-General, U. S. A., was appointed Judge Advocate and recorder of the commission, and the Hon. John A. Bingham and myself were assigned as assistants or special Judge Advocates.

The court convened on the 9th day of May, but adjourned to the 10th, to afford the accused an opportunity to procure counsel. On the 10th the accused were ar-

raigned on the following charge: "For maliciously, unlawfully, and traitorously, and in aid of the existing rebellion against the United States of America, on or before the 6th day of March, A. D. 1865, and on divers other days between that day and the 15th day of April, A. D. 1865, combining, confederating, and conspiring with one John Wilkes Booth, John H. Surratt, Jefferson Davis, George N. Saunders, Beverly Tucker, Jacob Thompson, William C. Cleary, Clement C. Clay, George Harper, George Young, and others unknown, to kill and murder within the Military Department of Washington and within the fortified and intrenched lines thereof, Abraham Lincoln, late, and at the time of said combining, confederating, and conspiring, President of the United States of America, and Commander-in-Chief of the Army and Navy thereof; Andrew Johnson, then Vice-President of the United States aforesaid; William H. Seward, Secretary of State of the United States aforesaid; and Ulysses S. Grant, Lieutenant-General of the Army of the United States, under the direction of the said Abraham Lincoln.

"And in pursuance of and in prosecuting said malicious, unlawful, and traitorous conspiracy aforesaid, and in aid of said rebellion afterward, to wit, on the 14th day of April, 1865, within the Military Department of Washington aforesaid, and within the fortified and intrenched lines of said Military Department, together with John Wilkes Booth and John H. Surratt, maliciously, unlawfully, and traitorously murdering the said Abraham Lincoln, then President of the United States and Commander-in-Chief of the Army and Navy of the United States as aforesaid; and maliciously, unlawfully, and traitorously assaulting with intent to kill and murder the said William H. Seward, then Secretary of State of the United States as aforesaid; and laying in wait with intent maliciously, unlawfully, and traitorously to kill and murder the said Andrew Johnson, then being Vice-President of the United States, and the said Ulysses S. Grant, then being Lieutenant-General and in command of the Armies of the United States as aforesaid."

The specifications set forth the act or acts of the accused and each of them, done and performed in the prosecution of said unlawful and traitorous conspiracy.

It is not my purpose on this occasion to review the history and scope of the conspiracy as developed by the investigation made and by the proof submitted to the court. It is sufficient for the purposes of this paper to say that nine as brave soldiers and as intelligent and conscientious officers as ever sat upon a military court in any land, after nearly two months of careful and laborious investigation, did find and decide that the "accused," together with John H. Surratt, John Wilkes Booth, Jefferson Davis, and his rebel agents and confederates then in Canada, viz., George N. Saunders, Beverly Tucker, Jacob Thompson, William C. Cleary, Clement C. Clay, George Harper, and George Young, were guilty of combining, confederating, and conspiring to kill and murder Abraham Lincoln, Vice-President Andrew Johnson, Secretary Seward, and General Grant; and that John Wilkes Booth, incited thereunto by Jefferson Davis, George N. Saunders, and the confederate agents above named, did on the 14th day of April kill and murder Abraham Lincoln, then President of the United States, in aid of the armed rebellion against the United States, and that the parties named did confederate and conspire to kill and murder Abraham Lincoln, then President of the United States and Commander-in-Chief of the Army and Navy thereof, and to kill and murder Andrew Johnson, then Vice-President of the United States, upon whom at the death of Abraham Lincoln the office of President of the United States and Commander-in-Chief of the Army and Navy thereof would devolve; and to kill and murder Ulysses S. Grant, then Lieutenant-General and under the direction of Abraham Lincoln, in command of the Armies of the United States; and to kill and murder William H. Seward, the Secretary of State of the United States, whose duty it was by law, upon the death of the President and Vice-President, to cause an election to be held for electors for President of the United States; the conspirators de-

signing and intending by the killing and murdering of Abraham Lincoln, Andrew Johnson, Ulysses S. Grant, and William H. Seward, to deprive the Army and Navy of the United States of a constitutional Commander-in-Chief; and to deprive the armies of the United States of their lawful commanders; and to prevent a lawful election of President and Vice-President of the United States, and by this means to aid and comfort the insurgents engaged in armed rebellion against the United States, and thereby to aid in the subversion and overthrow of the Constitution and laws of the United States."

It should be remembered in this connection that, during all the two months of this investigation by the commission, each of the accused was represented by one or more able counsel, among whom were the Hon. Reverdy Johnson, of Maryland; General Thomas Ewing, then of Washington, now of the bar of this city; Frederick A. Aiken, W. E. Doster, Walter S. Cox, and Frederick Stone, and that the whole power of the Government was put at the service of the accused and used unreservedly by their counsel to bring from any part of the United States any witnesses they might desire brought before the commission.

Some of the counsel for the accused seemed to be as much convinced as the court of the guilty participation of the rebel authorities at Richmond and their confederates in Canada in the conspiracy to assassinate President Lincoln. Walter S. Cox, Esq., counsel for Arnold and O'Loughlin, who made one of the very ablest arguments presented before the court, in his closing argument, said:

"First, then, what are some of the facts in relation to the alleged conspiracy? The assassination of the President and other heads of Government may have been discussed in the South, as a measure of ultimate resort to retrieve the fortunes of the Confederacy, when at their lowest ebb; the rebel agents in Canada may have individually signified their approval of the measure in the abstract, long since; but I undertake to maintain upon the evidence that there never was any final determination, on the part of any per-

son or persons, with whom any of these accused can possibly be connected, actually to attempt the life of the President or other functionary until a few days—*about one week*—before the murder; that no conspiracy for that object such as is charged against the accused was formed or at least had any actual existence at any time during the month of March as imputed in the charge and specification; and that if any conspiracy had ever been organized for such object, at an earlier period, it did not contemplate the event otherwise than contingency, and upon a contingency which never arrived until the period I have named, and was meanwhile completely in suspense and abeyance. The specification imputes that the accused were incited and encouraged to the murder by Davis, Thompson, Clay, and others, and this is of the very essence of the charge. The theory of the prosecution is that Booth, who is acknowledged to have been the head and front and soul of the conspiracy, if there was one, was only the hireling tool of these rebel emissaries. I think he was probably something more, but it will not vary the result. I think he was probably actuated not only by the sordid hope of reward, but by a misguided, perverted ambition. Of strong will and passions, and high nervous organization, accustomed to play parts, and those of a tragic character, he had contracted perverted and artificial views of life and duty, and had aspired to be the Brutus in real life that he had been or seen on the boards. He well knew, however, that the act he contemplated would be execrated all the world over, except *possibly* among those whom he intended to serve. Therefore, whether pecuniary reward or false glory was his object, he could hope for neither until he was secure of their approbation. Whatever his principle of action, he was wholly without motive for so desperate an undertaking until he had supposed he had the approval of the rebel authorities. When does the evidence show that this was given?"

Mr. Cox then proceeds to review the testimony, or a portion of it given upon this point, and adds: "Thus, in

the end there is seen to be a substantial accord between all the three witnesses, on the important question when the formal sanction of the Richmond authorities was received in Canada, and when consequently for the first time they were in a condition to give their formal and official approval to the proposed assassination.

“By whom the proposition was originally made to Thompson is involved in profound mystery, or, at most, is left to conjecture. If it came from Booth, both his conduct and that of the rebel band in Canada show that it was a mere offer unaccepted, unacted upon, and that its acceptance, and the granting of the authority it invited, was an open question from the month of December until the 5th of April. Booth was reported to have been in Canada in the fall and as late as December last, but since that time none of the testimony shows any immediate intercourse between him and the rebel emissaries there. And although Harper, Caldwell, Randall, and Ford are mentioned by Merrit as parties whom he understood to be implicated in the plot, we hear of no stir or activity among them until the 5th of April. It seems, therefore, very clear upon this testimony that this date was the earliest period at which any positive design was formed for the assassination.

“Now, it will be remembered that according to Weichmann, Surratt passed through Washington on the 3d of April (from Richmond) for Canada, where he probably arrived on the 6th, and that on the 6th or 7th, according to Conover, Jacob Thompson spoke of the dispatches carried by him as conveying the needful authority. This fact could easily be communicated by telegraph to the rebels in Toronto. And there is a perfect correspondence between their declarations and actions, on the 6th of April and after, according to Conover, that the sanction of the Richmond authorities to the assassination scheme was communicated for the first time in the dispatches carried by Surratt to Canada about the 5th of April. Thus in the end there is seen to be a substantial accord between all the three witnesses on the

important question, when the formal sanction of the Richmond authorities was received in Canada, and when consequently for the first time they were in a condition to give their formal and official approval to the proposed assassination."—(*Record of Trial*, p. 341.)

As early as November, 1864, Booth was revolving wild schemes either of forcible abduction of the President or assassination, and was busy, from that time down to the day of the assassination, in trying to enlist others in the devilish enterprise.

It was a part of the unwritten history of the time that on the day of President Lincoln's second inauguration, and while he was delivering his inaugural address, Booth sat near and just behind him, with the purpose to stab him to death then and there, if any fit opportunity should occur, in the press and confusion of the crowd, for him to do the deed, and make his escape; that while the noble Lincoln was uttering those immortal words, "With malice toward none, with charity for all," this armed assassin was near his side clutching the knife with which to stab him to death! Another curious fact connected with this event and known to many, is, that Booth secured his ticket of admission to these ceremonies through a United States Senator, one of the most faithful and earnest of the Union Republican group, and that it was procured through the intercession of his daughter, who, although she had only a casual acquaintance with Booth, had often seen him on the stage, and, like many of the romantic young ladies of our own city and time, had caught the fever of stage-hero worship.

Later on in the same month a movement was made either to forcibly abduct or assassinate the President. About the 20th of that month a party of seven armed and mounted men, four of whom were Booth, Surratt, Payne, and Atzerodt, appeared at Mrs. Surratt's house, and rode away on some desperate enterprise—alleged to have been the capture of the President on his way to or coming from the Soldiers' Home, and delivering him into the hands of the rebels. Through some cause, not positively known,

this plan was frustrated, and Booth, Payne, and Surratt returned to Mrs. Surratt's house very much excited and angered over their failure. Surratt threatened to shoot any one who approached his room, uttering wild exclamations that his prospects were gone, his hopes were blighted. In the afternoon, after Surratt and his party had departed on this enterprise, Mrs. Surratt was found in the hall or passage-way of her house weeping bitterly, and said to one who attempted to console her, "John is gone away!" grieving as though he was not to return, and showing knowledge of his enterprise.

About the 1st of April Booth went to New York and returned to Washington on the 8th, and from that time, as it appears, was busy with his confederates in maturing his plans for the proposed assassination of President Lincoln, Vice-President Johnson, Secretary Seward, and General Grant. I do not propose to review the evidence submitted to the court, bearing upon the general conspiracy and the act of assassination and the connection of each of the accused therewith, further than to give briefly the circumstances of the assassination of President Lincoln.

On the evening of the 14th of April, Major Rathbone and Miss Harris, of Washington, joined the President and Mrs. Lincoln, and drove with them in the President's carriage to Ford's Theatre, reaching there about half-past eight. At the theatre, when the presence of the President became known, the actors stopped playing, the band struck up Hail to the Chief, and the audience arose and received him with cheers and shouts of applause. The party passed to the right, into the President's box, in the second tier, which was on the left of the stage. The President seated himself in an arm-chair which had been expressly provided for him that afternoon by Mr. Ford—to the left of the box and nearest the audience. Mrs. Lincoln sat next to the right of the President, and to the right of her Miss Harris, and almost immediately behind Miss Harris sat Major Rathbone.

About nine o'clock of that evening Booth rode into the

alley in the rear of the theatre and called upon Spangler, a carpenter or employé of the theatre, to hold his horse. Spangler sent a young man named Burroughs, another employé. Booth stepped into the theatre through the rear door, took a brief survey of the house, passed out the same way, and soon after appeared at the front. There he held a private and hurried conversation with two or three persons. Just before ten o'clock he went into a saloon near the theatre and took a drink of whisky. He then came out and joined his confederates, the parties he had been conversing with. He then passed into the alley or passage leading to the stage from the street. At this time one of the confederates stepped into the vestibule of the theatre, looked at the clock, came out and called the time, started up the street, was gone a few minutes, returned, looked at the clock, and called the time again. By this time Booth had reappeared in front of the theatre. Presently this same party who had called the time came and looked at the clock and called the time a third time in a loud voice, "Ten minutes past ten!" He then started up the street, and Booth passed into the theatre. This, as stated, was about ten minutes past ten o'clock, and was during the second scene of the third act of *Our American Cousin*, then being performed by Laura Keene and her company at Ford's Theatre. Booth passed to the right, up near to the President's box, where he stopped a moment and leaned against the wall. He then stepped down one step, placed his hands on the door of the passage leading to the President's box, and his knee against it, and pushed the door open. He then placed a brace against the door on the inside, which had previously been prepared either by him or some one of his confederates for the purpose of preventing an entrance or intrusion from the outside, passed along the passage-way to the door on the left opening into the President's box, stopped and looked through a hole which had been cut and bored in the door to see the President's position and if his attention was concentrated upon the stage; softly pushed the door open and entered, no one observing

him ; then, standing within two or three feet of the President, fired. The ball entered the back part of the left side of the head of the President. The pistol used was a large-sized Derringer, about six inches in length, carrying a large hand-made ball. Upon hearing the discharge of the pistol behind him, Major Rathbone, looking around, saw through the smoke a man between the door and the President. At the same time he heard the man shout some word which he thought was "freedom." Another witness thought he shouted, "Revenge for the South!" Booth the moment he fired dropped his pistol and drew a long knife. Major Rathbone instantly sprang upon him and seized him. Booth wrested himself from the major's grasp and made a violent thrust at his breast with the knife, which Rathbone parried, receiving a wound in his left arm between the elbow and the shoulder about one and one half inch deep and several inches in length. Booth then rushed to the front of the box, Major Rathbone attempting to seize him again, but only caught his clothes as he was going over the railing. Booth put his left hand on the railing, holding in his right hand the knife point downward, leaped over and down to the stage, about twelve feet. As he was going over or descending, the spur on his right boot caught in the flag which had been draped in front of the President's box in honor of his presence, and clung to it, causing his right foot to partially turn under him as he struck the stage, and thereby one of the bones of his right leg was broken. Had it not been for this accident, Booth would doubtless have made his escape into Virginia within the Confederate lines and possibly out of the country ; and thus it was that the national flag was a mute instrument in the vengeance which overtook the President's murderer. Booth, as he fled across the stage, turned partially, faced the audience, threw up his hand holding the gleaming knife, and shouted, "*Sic semper tyrannis!*" He passed out by the right side of the stage, through the passage in the rear door of the theatre, threw it open, mounted his horse, which Burroughs was still holding, hit him a blow with the

handle of his knife, fled across the Navy-Yard bridge, and arrived at Lloyd's about twelve o'clock at night. On the way he had been joined by Herold. When they reached Lloyd's, Herold dismounted, went into the house, called Lloyd, and said to him, "Lloyd, for God's sake, make haste and get those things!" Lloyd testified that he did not make any reply, but went straight and got the carbines, supposing they were the parties Mrs. Surratt referred to when she notified him during the day that they would be called for that evening, though she had not mentioned any names. From Lloyd's Booth was traced to Dr. Mudd's, in Charles County, about thirty miles from Washington, where he arrived between three and four o'clock Saturday morning, the 15th. Dr. Mudd set his broken leg, and he left there about 4 P. M., passing down through St. Mary's, crossing the Potomac near Gamble's Creek, and the Rappahannock at Port Conway; thence on to Bowling Green, Caroline County, Virginia, to Garrett's farm and barn, where, on the night of the 26th of April, Herold was captured by a detachment of the Sixteenth New York Cavalry, commanded by Lieutenant Doherty, and Booth was shot by Sergeant Corbett.

At the moment the President was shot he was leaning with his hand or arm resting on the railing of the box, looking at some person in the orchestra, holding the flag aside to look between it and the post; he raised his head an instant and then it fell backward. He was carried to the residence of Mr. Petersen, just opposite the theatre, where he expired about seven o'clock on the morning of the 15th.

The trial of the accused occupied the commission from the 10th day of May to the 30th day of June inclusive, and resulted in the conviction of Herold, Atzerodt, Payne, and Mrs. Surratt, and their sentence to be hanged at such time and place as the President might direct; and the conviction of O'Loughlin, Spangler, Arnold, and Mudd, and the sentence of all except Spangler to imprisonment at hard labor for life. Spangler was sentenced to hard labor for six years. On July 5, 1865, these sentences were approved by

President Johnson, and the sentences of Herold, Atzerodt, Payne, and Mrs. Surratt were ordered to be carried into effect on the 7th of the same month, between the hours of ten o'clock A. M. and two o'clock P. M.

On the morning of the 7th a writ of *habeas corpus*, issued by Justice Wylie, of the Supreme Court of the District of Columbia, was served upon General Hancock, then commanding the Middle Military Division, commanding him to produce before his Honor the body of Mrs. Surratt. Justice Wylie signed the order for the issuance of the writ at ten o'clock in the morning, and at half-past eleven General Hancock appeared in person, accompanied by Attorney-General Speed, before his Honor, and submitted the following return :

HEADQUARTERS MIDDLE MILITARY DIVISION,
WASHINGTON, D. C., July 7, 1865.

To Hon. ANDREW WYLIE, Justice of the Supreme Court of the District of Columbia :

I hereby acknowledge the service of the writ hereto attached and return the same, and respectfully say that the body of Mary E. Surratt is in my possession, under and by virtue of an order of Andrew Johnson, President of the United States and Commander of the Army and Navy, for the purposes in said order expressed, a copy of which is hereto attached and made part of this return; and that I do not produce said body, by reason of the order of the President of the United States, indorsed upon said writ, to which reference is hereby respectfully made, dated July 7, 1865.

W. S. HANCOCK,
Major-General United States Volunteers,
Commanding Middle Division.

The President's indorsement :

EXECUTIVE OFFICE, July 7, 1865, 10 A. M.

To Major-General W. S. HANCOCK, Commander, etc. :

"I, Andrew Johnson, President of the United States, do hereby declare that the writ of *habeas corpus* has been

heretofore suspended in such cases as this, and I do hereby especially suspend this writ, and direct that you proceed to execute the order heretofore given upon the judgment of the military commission, and you will give this order in return to the writ.

ANDREW JOHNSON, *President*.

The Court ruled that it yielded to the suspension of the writ of *habeas corpus* by the President, and the sentences were duly carried into execution.

No trial which ever took place in this country excited so much interest throughout the whole land as did the trial of these conspirators and assassins; not only because of the great love of the people for Abraham Lincoln, but from a natural desire to learn from sworn testimony how widespread was the conspiracy, what was its scope and purpose, who actually took part in carrying it into execution, and how far the rebel authorities in Richmond and their agents in Canada had knowledge of the proposed assassination of the heads of the Government, sanctioned it, aided it, and were responsible for it. Perhaps some additional interest was excited by the fact that a woman was charged with being one of the conspirators.

For this trial, and especially for the trial and execution of Mrs. Surratt, that portion of the press and the persons in sympathy with the late rebellion, indulged in most bitter denunciation of the Court; the Judge Advocates; General Hartranft, who was in immediate command of the detail having the prisoners in charge, and who carried into execution the sentence of the Court; and of General Hancock, who was in command of the military forces in and around Washington. No falsehood was too extravagant to be imagined, stated, and believed. As an illustration of this, I remember once in passing along a street in Cincinnati, when a lady beside whom was standing one of these rebel sympathizers honored me with a bow and a pleasant smile. The gentleman turned to her and said, "Do you know who that is you have just bowed to?" "Oh, yes, very well," she said. "Well, do you know that he hung Mrs. Surratt

with his own hand, and smiled as he came down from the scaffold?"

But as illustrating still further the malicious misrepresentations that followed this trial, let me recall to your minds the letter of Mrs. Jane Swisshelm, published in the New York Tribune of September 10, 1873. In this letter she gives the impression that Mrs. Surratt was manacled in court during her trial, and vividly pictures how on one occasion she (Mrs. Swisshelm) was present in the court, and gave public exhibition of her suffering and indignation at this outrage and cruelty. The Washington Chronicle, noticing this letter of Mrs. Swisshelm, addressed a note to Mrs. Surratt's counsel, Mr. Aiken, making inquiry as to the fact. He replied as follows:

WASHINGTON, D. C., 1047 F STREET, *September 17, 1873.*

To the Editor of the Chronicle:

I have your letter of this date, inclosing the letter of Jane G. Swisshelm, published in the Tribune (N. Y.), the 16th instant, and asking me, 'Is her statement true that Mrs. Surratt was manacled during her trial?' Without reference to any other fact or to any of the details of the case of that most unfortunate lady, I have to say in reply that at no time during her unlawful trial was Mrs. Surratt manacled, either on her wrists or her ankles, while in the presence of the Court. I not only speak from my own absolute knowledge, but from recollection of Mrs. Surratt's oft-repeated statements to me that she was not manacled.

Yours very truly,

FREDERICK A. AIKEN.

The Chronicle adds, "Now can any fair-minded person, however prejudiced, come to any other conclusion than that the garrulous old lady has willfully and maliciously misrepresented the facts, for the mere purpose of glorifying herself?" I must agree with this conclusion, because I know personally that Mrs. Surratt was not manacled, and that no such scene as Mrs. Swisshelm describes

ever took place in the court-room. But this letter of Mrs. Surratt's counsel did not put underground the falsehood that she was manacled during her trial—periodically it reappears, fresh and vigorous.

General Hancock was especially denounced because he was obedient to the order of the President—the Commander-in-Chief of the Army under the Constitution—and had failed to deliver Mrs. Surratt over to the custody of the Court under the *habeas corpus* proceedings. His rivals and enemies made most unscrupulous use of this weapon against him as soon as he became prominently talked of as Democratic nominee for President, and after his nomination, in 1880.

In 1871 one of the leading papers of St. Louis said: "Quite a number of the Federal officers, dissatisfied with the political character and partisan purposes of the late war, resigned their positions in the army at one time or another. Some of them felt that the 'Union' had somehow come to be a secondary consideration in the fight; others, that it was a merely partisan struggle for the ascendancy; but General Hancock, the favorite of a few Western Democrats as a candidate for President, seems to have detected none of these objections. He did his duty like a stolid serving-man through the war. When at New Orleans, he issued an order that made him great capital among the Southern people; and, when at the North, he distinguished himself equally as a Federal zealot. It was General Hancock, then in command of the Middle Military Division of Washington, who declined to interfere with the order of the court-martial sentencing Mrs. Surratt to death. It was he who became the virtual executioner of that innocent woman, and made himself party to one of the most inhuman crimes ever perpetrated in the name of justice."

This sort of criticism and abuse embittered many an hour of General Hancock's life up to the day of his death. General Hancock, as we all know who knew him well, in his personal relations with his fellow-men was as kindly

and gentle as a child; was a man with the highest ideals and rules of conduct, and as a soldier was as brave and knightly as ever buckled sword.

Of a peculiarly proud and sensitive disposition, any word which assailed either his personal honor or his record as a soldier tortured him like a festering wound.

He talked with me several times about these attacks which had been made upon him, and in 1873 I determined to write an article reviewing some of the incidents of the trial of the assassins and General Hancock's relation to it. This purpose I made known to him; and he then informed me that an article had been prepared by some friend of his upon the subject, and if I wished he would have it sent to me, and I could make such use of it in the preparation of my article as I wished. It was subsequently sent to me, and I still have it in my possession. About the same time I received from him the following note:

NEW YORK, *October 1, 1873.*

MY DEAR COLONEL: General Mitchell has the paper I spoke to you of. It reached me this A. M. If you will notify General M. [W. G. Mitchell] where to send it and when, he will send it by messenger to you.

The latter part of the paper contains the matter I particularly desire you to see, although it might be well for you to read the whole. You are at liberty to use any part of it *verbatim* or *nil*. It was not printed. I should be pleased if you would preserve the paper for me.

I leave for St. Louis this P. M. The only true plan is to meet and *crush* out this Surratt matter, not to "dally it"—as this paper, for example. It is about my idea of meeting the question.

Yours truly,

WINFIELD S. HANCOCK.

To COLONEL BURNETT, N. Y.

This paper is too long to present here, but I will give a few extracts showing General Hancock's views of his relation to the *habeas corpus* episode and Mrs. Surratt's con-

nection with the conspiracy. I quote from the paper as follows :

“ On the 7th day of July, 1865, the day of the execution, the Honorable Andrew Wylie, a Judge of the Supreme Court of the District of Columbia, issued a writ of *habeas corpus* directed to General Hancock, commanding him to produce the body of Mary E. Surratt in court. Thereupon Andrew Johnson, as President of the United States, and as such superior in authority to General Hancock, assumed the responsibility of suspending the writ of *habeas corpus* and setting aside the order of the judge. The President's order was in these words, and was indorsed on the writ of *habeas corpus*. [Here is given the President's order, as given above.]

“ Nevertheless, General Hancock deemed it his duty to appear before Judge Wylie and submit himself to the judgment of the civil court. Having appeared before the civil court, General Hancock filed the following statement in writing, in obedience to the command of the writ of *habeas corpus*, setting out the return above.

“ Judge Wylie said : ‘ The Court finds itself powerless to take any further action in the premises, and therefore declines to make an order, which would be vain for any practical purpose. As regards the delay, it having been fully accounted for, *the Court has no fault to attach to the respondent* (General Hancock) in that respect.’ . . .

“ Against such a record as this nothing but inveterate malice would prefer a censure against General Hancock. The conduct of General Hancock was not only dutiful and obedient to the civil authority, but such as to manifest for that authority profound respect and reverence.

“ It was not necessary he should appear in person before the Court. He went, however, laid aside the sword, and submitted himself to its judgment. He could have assumed an air of defiance. He could have spurned the puny power of the civil magistrate, who had presumed to send his mandate to a military commander of a hundred thousand soldiers. But no, he deemed it an imperative

duty to submit himself *personally* to the authority and jurisdiction of the Court.

“If General Hancock was responsible for the non-production of the body of Mrs. Surratt, the Court was armed with jurisdiction to fine and imprison him for the dereliction of duty, and for a contempt of the authority of the Court.

“But the Court did neither. Judge Wylie dismissed the General from his court without punishment and without censure; assigning the failure of the writ, not to an act of General Hancock, but to the act of the President. . . . The suggestion that General Hancock should have resigned is simply silly. His resignation could have no tendency to bring the body of Mrs. Surratt into court or to prevent her execution. . . .

“It has been a common thing for those who, from political partisanship or personal malice, have been most violent in their clamor against General Hancock in this connection, to omit all mention of the other parties who suffered with Mrs. Surratt. It would seem as if, in their opinion, no inhuman crime was perpetrated in the execution of Herold, Atzerodt, or Payne. The reason for this is plain enough. There is always sympathy for a woman. And it is supposed that much will be conceded for her which could not be asked in the case of another person. It is quite immaterial to our present purpose whether Mrs. Surratt was innocent or guilty of the crime for which she suffered, since General Hancock was in no wise responsible for it. But when she is pronounced perfectly innocent and her execution ‘an inhuman murder’ committed by nine respectable officers of the army, and by the approbation of the President, without evidence of guilt, it is not amiss to state the simple facts of her case.

“That nine men of ordinary respectable character in the Federal army, colonels, brigadiers, and major-generals, should have been so lost to all sense of duty and humanity, so ineffably brutal, as to sentence a woman to death for nothing, is a very strong proposition.

“ Any one who looks into the evidence will find out that for some weeks before the assassination Mrs. Surratt was holding frequent private interviews with Wilkes Booth ; and was also on terms of intimate communication in her own house with Lewis Payne, *alias* Wood, *alias* Powell, who attempted the life of Mr. Seward. Some weeks before the assassination, John H. Surratt, David E. Herold, and George A. Atzerodt left at the house of a Mr. Floyd, near Washington, two carbines, ammunition, and a rope sixteen to twenty feet long, which were laid away under a joist until they should be wanted. On the Monday preceding the assassination Mrs. Surratt came to Floyd's house, and inquired about the ‘ shooting-irons,’ and told Floyd ‘ they would be wanted soon.’ On the very day of the assassination Mrs. Surratt was at Floyd's house again and told him ‘ to have the shooting-irons ready for that night ; that some parties would call for them that night.’ She then gave Mr. Floyd a field-glass and asked him to have all the things ready, with two bottles of whisky, for the parties who would call for them *in the night*, and left.

“ True to her prediction, at about a quarter-past twelve o'clock the same night, Booth and Herold came to Floyd's and called for the carbines, field-glass, and whisky, which Floyd delivered to them according to Mrs. Surratt's directions. Herold took his carbine, but Booth was unable to carry his, having a broken leg, and so left it behind. The assassins were at Floyd's house about five minutes. Booth said, as they rode off: ‘ I will tell you some news. I am pretty certain we have assassinated the President and Secretary Seward.’

“ About midnight on the 17th of April, 1865, the third day after the assassination, Payne, who till then had secreted himself, came disguised to Mrs. Surratt's house and was arrested by soldiers then in possession of it. He said Mrs. Surratt had sent for him to dig a ditch.

“ Mrs. Surratt, though she knew him well, denied she ever saw him. Her words were, ‘ Before God, I do not know this man, and have never seen him.’

"It is not for us to pass upon the guilt of Mrs. Surratt. We would prefer to behold her pure and stainless 'as the angels in heaven.'

"But whomsoever indulges in wide-mouthed proclamations, or pronounces her conviction 'an inhuman crime' unsupported by evidence, betrays an *animus*, to say the least, not overcareful of the truth. The same *malevolent animus* which, in defiance of all truth, calls General Hancock her murderer, also denounces him for having been a *Union soldier*, and for not resigning his commission, and for all the gallant service he has rendered to his country.

"'Cease, viper; you bite a file!'"

Of General Hancock's connection with the trial and the *habeas corpus* proceedings, in an interview published in the *New York World*, August 5, 1880, after his nomination for the presidency by the Democratic party, although I was a Republican and voted against him, I took occasion to say:

"I do not think that anybody who ever examined the case fairly could impute the least blame to General Hancock. I think from first to last he only performed what was his strict military duty." After citing the record: "Thus you see that General Hancock fully respected the writ of *habeas corpus* and made a proper and respectful return to it, pleading a higher authority for not obeying it by producing the body of Mrs. Surratt. . . . Any attempt to cast blame on General Hancock for his action in connection with these events I feel confident must fail. He simply performed his duty like a good soldier."

After the nomination of General Hancock for the presidency in 1880 by the Democratic party, at the request of the editor of the *North American Review*, Mr. Speed, Mr. Lincoln's Attorney-General, prepared a paper for that periodical on the trial of Mrs. Surratt. In that article, among other things, in speaking of the military commission and the fairness of her trial, he said:

"The military commission which tried the assassins of the President was carefully selected. It was composed of men taught by experience and habit to maintain coolness

and equanimity in the midst of the most exciting scenes. If it was possible at that period and at that place to have secured a fair trial, the method adopted was the most certain to secure it. That commission certainly had no desire to wantonly and recklessly inflict punishment upon a woman. It patiently investigated the case. If Mrs. Surratt had not been guilty—if there had been any reasonable doubt of her guilt—she would have been acquitted, as some of the other accused persons were. The Government never showed any disposition to deal severely with any of those guilty of crimes connected with the rebellion. Its military power was exercised mildly and humanely. It was only in a few instances of absolutely hideous crimes that the perpetrators suffered the extreme penalty.

“There is no ground for the complaint that the military court was harsh, or unjust, or cruel. There is every ground for the conclusion that it did its duty with judicial calmness and perfect conscientious impartiality. It found the proofs of guilt clear and incontestable, and rendered judgment accordingly. . . . There was an additional guarantee of fairness of the proceeding against the assassins of the President in the fact that General Hancock, a disciplined, trained, and accomplished soldier, was in command at Washington at the time. His calmness and equipoise in the midst of excitement, cultivated by familiarity with scenes of carnage in the whirlwind of scores of terrific conflicts, would naturally inspire calmness in others. Had the assassins been turned over to the civil courts for trial, the result would doubtless have been the same; and, in that case, we would have heard a more just complaint, perhaps, that, instead of a trial by an impartial military tribunal, they were remanded to the mercies of an angry and revengeful mob of passionate civilians, from whom it was impossible to obtain a fair jury.”

This was the calm judgment upon this trial and the justice of Mrs. Surratt's conviction of one of the purest of men—one of the ablest lawyers of his time—after the thought and reflection of fifteen years.

THE CONTROVERSY BETWEEN PRESIDENT JOHNSON AND JUDGE HOLT.

A Paper read by GEN. HENRY L. BURNETT, late U. S. V., at a Meeting of the Commandery, State of New York, Military Order, Loyal Legion, April 3, 1889.

PERHAPS no incident connected with the trial of the assassins of President Lincoln created more general interest—was so much discussed and commented upon by the public press, or aroused deeper feeling of antagonism and bitterness between two public men, than the charge by President Johnson that the Judge-Advocate-General, Judge Holt, had withheld or suppressed the recommendation to mercy of Mrs. Surratt signed by five members of the commission, when he presented to him, the President, the record for his official action. While this charge had circulation and was asserted in the press during the time Mr. Johnson was occupying the presidential office, Mr. Johnson never openly made the charge until after his term had expired, some time in 1873.

No graver charge could be made against a public officer than this against Judge Holt, and, if true, no more cruel and treacherous betrayal of a public trust was ever committed by a man in high official position. It would be murderous in intent and effect. This charge rested, so far as human testimony went, upon the solemn assertion alone of President Johnson, and, if untrue, was one of the most cruel wrongs ever perpetrated by one man against another. I propose to give a brief abstract of the testimony produced by Judge Holt to disprove this charge, and also a statement of my connection with, and what little personal knowledge I had of, the matter.

In a communication addressed to the Washington Chronicle, dated August 25, 1873, Judge Holt gives a copy of a

letter addressed by him to the Secretary of War, on the 14th of that month, in which he sets forth evidence tending to disprove the charge originating with Andrew Johnson, of his suppression of the petition, signed by five of the nine members of the commission, recommending, in consideration of her age and sex, a commutation of the death-sentence of Mary E. Surratt to imprisonment for life in the penitentiary. The petition read as follows: "To the President: The undersigned, members of the military commission appointed to try the persons charged with the murder of Abraham Lincoln, etc., respectfully represent that the commission have been constrained to find Mary E. Surratt guilty, upon the testimony, of the assassination of Abraham Lincoln, late President of the United States, and to pronounce upon her, as required by law, the sentence of death; but, in consideration of her age and sex, the undersigned pray your Excellency, if it is consistent with your sense of duty, to commute her sentence to imprisonment for life in the penitentiary."

In a letter dated February 11, 1873, addressed to Hon. John A. Bingham, one of the special Judge Advocates during the trial, Judge Holt states: "In the discharge of my duty when presenting that record to President Johnson, I drew his attention to that recommendation, and he read it in my presence, and before approving the proceedings and sentence. He and I were together alone when this duty on his part and on mine was performed. . . . The President and myself having, as already stated, been alone at the time, I have not been able to obtain any positive proof on the point, although I have been able to collect circumstantial evidence enough to satisfy any unbiased mind that the recommendation was seen and considered by the President, when he examined and approved the proceedings and sentence of the Court. Still, in a matter so deeply affecting my reputation and official honor, I am naturally desirous of having the testimony in my possession strengthened as far as practicable, and hence it is that I trouble you with this note. While I know that the question

of extending to Mrs. Surratt the clemency sought by the petition was considered by the President at the time mentioned, I have, in view of its gravity, been always satisfied that it must have been considered by the Cabinet also; but from the confidential character of Cabinet deliberations I have thus far been denied access to this source of information." He then proceeds to inquire whether or not he (Judge Bingham) had any conversation with Secretary Seward or Mr. Stanton in reference to this petition, and if so to please give him as nearly as he (Judge Bingham) could, all that Secretary Seward or Mr. Stanton had said upon the subject.

Judge Bingham replied under date of February 17, 1873, and among other things said :

" Before the President had acted upon the case, I deemed it my duty to call the attention of Secretary Stanton to the petition for the commutation of sentence upon Mrs. Surratt, and did call his attention to it, before the final decision of the President. After the execution, the statement which you refer to was made that President Johnson had not seen the petition for the commutation of the death-sentence upon Mrs. Surratt. I afterward called at your office, and, without notice to you of my purpose, asked for the record of the case of the assassins; it was opened and shown me, and there was then attached to it the petition, copied and signed as hereinbefore stated. Soon thereafter I called upon Secretaries Stanton and Seward and asked if this petition had been presented to the President before the death-sentence was by him approved, and was answered by each of those gentlemen that the petition was presented to the President, and was duly considered by him and his advisers before the death-sentence upon Mrs. Surratt was approved, and that the President and Cabinet, upon such consideration, were a unit in denying the prayer of the petition; Mr. Stanton and Mr. Seward stating that they were present.

" Having ascertained the fact as stated, I then desired to make the same public, and so expressed myself to Mr.

Stanton, who advised me not to do so, but to rely upon the final judgment of the people."

In replying to this letter, Judge Holt very justly remarks: "It would have been very fortunate for me indeed could I have had this testimony in my possession years ago. Mr. Stanton's advice to you was, under all the circumstances of the case, most extraordinary.

"The asking you 'to rely upon the final judgment of the people,' and at the same time withholding from them the proof on which the judgment—to be just—must be formed, was a sad, sad mockery."

The next is a letter from ex-Attorney-General Speed, dated March 30, 1873, in which he says: "*After the finding of the military commission that tried the assassins of Mr. Lincoln and before their execution, I saw the record of the case in the President's office, and attached to it was a paper, signed by some of the members of the commission, recommending that the sentence against Mrs. Surratt be commuted to imprisonment for life; and, according to my memory, the recommendation was made because of her sex.*

"I do not feel at liberty to speak of what was said at Cabinet meetings. In this I know I differ from other gentlemen, but feel constrained to follow my own sense of propriety."

So that it is most clear from this statement of Attorney-General Speed, unless he without interest or motive stated a most deliberate falsehood, that Judge Holt did *not* "withhold" or "suppress" the recommendation to mercy, but carried it with the record and "*attached to it,*" as Mr. Speed says, and delivered it in the President's office. Certainly every intelligent mind will concede that this testimony of Mr. Speed utterly disposes of the charge of Andrew Johnson that Judge Holt "suppressed" or "withheld" this recommendation to mercy. If Mr. Johnson did not see it or read it when in his office, that was his neglect, his failure to perform a solemn official duty. But on this question of

his having *read* and *considered* it, how stands the evidence? Judge Holt states that he drew his attention to it, and that Mr. Johnson read it in his presence. Judge Bingham says both Mr. Stanton and Mr. Seward stated to him that this petition had been presented to the President and was duly considered by him and his advisers before the death-sentence upon Mrs. Surratt was approved. Under date of May 27, 1873, James Harlan, a former member of Mr. Johnson's Cabinet, addressed a letter to Judge Holt, in which he said: "After the sentence and before the execution of Mrs. Surratt, I remember distinctly the discussion of the question of the commutation of the sentence of death pronounced on her by the Court to imprisonment for life had by members of the Cabinet in presence of President Johnson. I can not state positively whether this occurred at a regular or a called meeting, or whether it was at an accidental meeting of several members, each calling on the President in relation to the business of his own department. The impression on my mind is, that the only discussion of the subject by members of the Cabinet which I ever heard occurred in the last-named mode, there being not more than three or four members present—Mr. Seward, Mr. Stanton, and myself, and probably Attorney-General Speed, and others—but I distinctly remember only the first two. When I entered the room, one of these was addressing the President in an earnest conversation on the question whether the sentence ought to be modified on account of the sex of the condemned. I can recite the precise thought, if not the very words, used by this eminent statesman, as they were impressed on my mind with great force at the time, and I have often thought of them since, viz.: 'Surely not, Mr. President, for if the death-penalty should be commuted in so grave a case as the assassination of the head of a great nation, on account of the sex of the criminal, it would amount to an invitation to assassins hereafter to employ women as their instruments, under the belief that if arrested and condemned, they would be punished less severely than men. An act of executive clemency on

such a plea would be disapproved by the Government of every civilized nation on earth.' ”

Judge Harlan adds that he made inquiry at the time, and “ was told that the whole case had been carefully examined by the Attorney-General and the Secretary of War, and that the only question raised was whether the punishment shall be reduced on account of the sex of the party condemned. I do not remember that any differences of opinion were expressed on that point.”

This is indirect but very conclusive evidence that the petition was attached to the record submitted to the President and examined by the Attorney-General and Secretary of War; and that the subject of the mitigation of Mrs. Surratt's sentence was considered by the President and these members of his Cabinet, because in no part of the record was there the slightest allusion to the question of clemency to Mrs. Surratt, or to any of the other convicted persons, except in the petition signed by the five members of the Court.

The next is a letter from the Rev. J. George Butler, pastor of St. Paul's Church, Washington. Under date of December 5, 1868, in describing an interview he had with President Johnson, he says: “ The interview occurred during a social call upon the family of the President in the evening, a few hours after the execution.

“ I had been summoned by the Government, I then being a hospital chaplain, to attend upon Atzerodt, and was present at the execution.

“ Concerning Mrs. Surratt the remarks of the President, by reason of their point and force, impressed themselves upon my memory. He said, in substance, that very strong appeals had been made for the exercise of executive clemency; that he had been importuned; that telegrams and threats had been used; but he could not be moved, for, in his own significant language, Mrs. Surratt ‘ *kept the nest that hatched the eggs.*’

“ The President further stated that no plea had been urged in her behalf, save the fact that she was a *woman*, and

his interposition upon that ground would license female crime."

This harmonizes entirely with the "thought" which Secretary Harlan heard uttered with so much force by a member of the Cabinet in Mr. Johnson's presence—either Mr. Stanton or Mr. Seward—and from his language, "this eminent statesman," I take it to have been Mr. Seward.

The Rev. Mr. Butler adds: "I feel it due to a Christian soldier and personal friend (General Eakin) to make this statement, showing clearly that at the time of the execution the President's judgment wholly accorded with the judgment of the military commission; and that no appeals could then change his purpose to make 'treason odious.'"

General R. D. Mussey, under date of August 19, 1873, writes to Judge Holt:

"In a few days after the assassination I was detailed for duty with Mr. Johnson and acted as one of his secretaries, and was an inmate of his household until some time in the fall of 1865.

"About the time the military court that tried Mrs. Surratt concluded its labors, I was, if I remember aright, for some days the only person acting as private secretary at the White House, my associate being absent on a visit.

"On the Wednesday previous to the execution (which was on Friday, July 7, 1865), as I was sitting at my desk in the morning, Mr. Johnson told me that he was going to look over the findings of the Court with Judge Holt, and should be busy and could see no one. I replied, 'Very well, sir, I will see that you are not interrupted,' or something to that effect, and continued my work. I think it was two or three hours after that that Mr. Johnson came out of the room where he had been with you, and said that the papers had been looked over and a decision reached. I asked what it was. He told me, approval of the findings and sentence of the Court; and he then gave me the sentences as near as he remembered them, and said that he had ordered the sentence where it was death to be carried into execution on the Friday following. I remember looking up

from my desk with some surprise at the brevity of this interval, and asking him whether the time wasn't rather short. He admitted that it was, but said that they had had ever since the trial began for 'preparation'; and either then or later on in the day spoke of his design in making the time short, so that there might be less opportunity for criticism, remonstrance, etc. I do not pretend to use his precise language as to this, but the purport of it was that 'it was a disagreeable duty, and there would be endeavors to get him not to perform it, and he wished to avoid them as much as possible.' . . . I am very confident, though not absolutely assured, that it was at this interview Mr. Johnson told me that the Court had recommended Mrs. Surratt to mercy on the ground of her sex (and age, I believe). But I am certain he did so inform me about that time; and that he said he thought the grounds urged insufficient, and that he had refused to interfere; that if she was guilty at all, her sex did not make her any the less guilty; that he, about the time of her execution, justified it; that he told me there had not been women enough hanged in this war."

This evidence would seem to establish most conclusively that the "petition" was not only attached to the record, and delivered by Judge Holt at the President's office in the Executive Mansion, but that he read the same and afterward considered and discussed it with at least three members of his Cabinet; and intelligent charity can reach no further than to say that President Johnson, when he charged Judge Holt with having withheld this recommendation to mercy when he delivered the record of the trial at the Presidential Mansion, made a cruel and untruthful charge; and that when he asserted in 1873 that he had not seen, read, or heard of this recommendation to mercy, at the time he approved the sentences on the 5th day of July, 1865, had forgotten the facts—that his "forgettery" was much better than his memory.

One of the main points in President Johnson's response to this evidence was that in the published volume of the

record of the trial of the assassins, prepared by Mr. Ben Pittmann, of Cincinnati, under my official supervision, this recommendation to mercy does not appear. There is no force in this. The petition or recommendation to mercy constituted properly no part of the official record of the trial. Mr. Pittmann, who had his desk and place in my office at the War Department, was one of the official stenographers of the court, and had special charge and custody of the record from day to day. The other reporters sent in to him their portions of the testimony as they were written up, and thereafter he was responsible for them. My recollection is also that as the testimony was written up a press copy was made of it, which he (Mr. Pittmann) took with him to Cincinnati, and used, after he had received permission from the War Department to publish.

The commission met with closed doors at 10 A. M. on the 29th of June to consider its findings, and continued and concluded its labors with closed doors on the 30th. From these meetings all the stenographic reporters were excluded. The findings and sentences, when finally made and recorded, were handed to me to be attached to the record, or to go with the record to the Judge-Advocate-General's office, as was then the course of procedure. By the oath administered all the members of the commission, as well as the Judge Advocates, were bound not to reveal those findings and sentences. I therefore retained them in my possession, instead of passing them on to the stenographers. When the recommendation to mercy was drawn and signed by five members of the commission, that was also handed to me to accompany the findings.

Mr. Pittmann never saw, I presume, either the original findings or the recommendation to mercy, and the first knowledge he had of the former doubtless was after they were promulgated by the Adjutant-General on the 5th day of July. This is evidenced by the fact that the Adjutant-General, in promulgating the proceedings, took Mrs. Surratt's name from the position it occupies in the records, and placed it next that of Payne, evidently for the purpose of

grouping together the four persons condemned to death. Mr. Pittmann gives the findings and sentence in the order promulgated by the Adjutant-General—that is to say, he places the findings and sentence in Mrs. Surratt's case next after that of Lewis Payne; while the Court, in making up its findings, followed the order named in the charge and specifications, where Mrs. Surratt's name follows that of Samuel Arnold.

When I reached my office at the War Department on the 30th—possibly on the morning of the 1st of July—I attached the petition or recommendation to mercy of Mrs. Surratt to the findings and sentence, and at the end of them, and then directed some one—probably Mr. Pittmann—to carry the record of the evidence to the Judge-Advocate-General's office. I carried the findings and sentences and the petition or recommendation and delivered them to the Judge-Advocate-General in person or to the clerk in charge of court-martial records. Before leaving the War Department I may have attached these findings and sentences and petition to the last few days of testimony, and carried that to the Judge-Advocate-General's office. I never saw the record again until many years after—I think in 1873 or 1874.

I left Washington several days before, and was not there on the day of the execution. My recollection is, that I left there either on the evening of the 5th or on the morning of the 6th of July. On the 5th day of July, when Judge Holt had his conference with President Johnson over the record and proceedings of the military commission, when the President considered and passed upon the findings and sentences of the accused persons, after that interview Judge Holt came directly to Mr. Stanton's office in the War Department. I happened to be with Mr. Stanton as Judge Holt came in. After greetings the latter remarked, "I have just come from a conference with the President over the proceedings of the military commission." "Well," said Mr. Stanton, "what has he done?" "He has approved the findings and sentence of the Court," replied Judge Holt.

“What did he say about the recommendation to mercy of Mrs. Surratt?” next inquired Mr. Stanton. “He said,” answered Judge Holt, “that she must be punished with the rest; that no reasons were given for his interposition by those asking for clemency, in her case, except age and sex. He said her sex furnished no good ground for his interfering; that women and men should learn that if women committed crimes they would be punished; that if they entered into conspiracies to assassinate, they must suffer the penalty; that were this not so, hereafter conspirators and assassins would use women as their instruments; it would be mercy to womankind to let Mrs. Surratt suffer the penalty of her crime.” After some further conversation, and after making known to Mr. Stanton that the President had fixed Friday the 7th as the day of execution, Judge Holt left. In giving the above conversation I can not say that I have given the exact words; but the substance of what Judge Holt said I know I have given. It is indelibly impressed upon my memory. This conversation, while it does not constitute legal evidence of the fact of President Johnson's consideration of the recommendation to mercy, has always been a circumstance strong and convincing to my mind that President Johnson's charge was totally false. It showed that Mr. Stanton had knowledge of the recommendation—probably had examined the record in the four or five days which had intervened since the trial. As Secretary of War he was at that time daily—almost hourly—in consultation with the President over the disbandment of the military forces; the occupation by the army of the rebel States; the powers and duties of officers there, and the innumerable questions semi-military in character arising out of the chaotic political and social condition of the rebel States, and they could hardly have come together at that time without the question of the conviction and execution of the assassins coming up. The circumstances of the assassination, the plot or conspiracy to assassinate President Lincoln and his Cabinet, the Vice-President himself, and General Grant; who were concerned in it; the

evidence submitted to the Court, the weight given to it by the Court, and the conclusions reached by the Court—were matters in which the President and the Secretary of War could not fail to take, and, as is well known, did take the deepest possible interest. It is past human credulity to believe that they would thus come together during the time intervening between the conclusion of the trial on the 30th day of June and the execution of the sentences on the 7th day of July, and the result of the trial, together with the recommendation to mercy, not be discussed between them. It is inconceivable to me that Judge Holt, even if he were so malicious and murderous in purpose, could be so reckless and foolish in execution of such purpose as to withhold from and try to conceal from President Johnson this recommendation to mercy, when the fact of its existence was known to Mr. Stanton, and was so certain to be made known to the President by him, and its contents discussed between them.

The historian in passing judgment upon this event, and in weighing the evidence as to the truth or falsity of this charge made by President Johnson, will take into consideration the mental characteristics and moral fiber of the two men, and what adequate motive there was actuating one occupying the exalted position of President Johnson to make the charge, or of Judge Holt to commit so wicked and cruel a wrong.

Andrew Johnson's mental make-up is well known to the officers of the old Union army, and to the American people. His life, his acts, and his speeches are still remembered, and the public judgment formed and registered. I do not propose here to-night to take your time in going into a statement or discussion of this subject. It is sufficient to say that he was endowed by nature with more than ordinary intellectual abilities, and that he had risen from the lowest walks of life by the vigor of his own will, energy, and mental power, through many intermediate places of honor and trust to the second place in the gift of the American people—the Vice-Presidency of the United States.

He was a man of controlling prejudices and strong personality. He was ambitious, bold, hot-tempered, obstinate, and in the achievement of the ends and aims he sought—right ends and aims he may have thought them—he was unscrupulous in the means he used. This is well illustrated in the instance given by General Sheridan in his memoirs of President Johnson's treatment of him while he was in command in New Orleans in 1866.

You will recall the intense feeling aroused throughout the country by the wanton and bloody massacre of the convention assembled at New Orleans on the 30th of July that year to remodel the Constitution of that State. General Sheridan had been absent several days in Texas, and was returning, when the riot occurred. He reached New Orleans August 1st, made an investigation, and on the same day sent the following telegraphic report to General Grant :

“You are doubtless aware of the serious riot which occurred in this city on the 30th. A political body, styling themselves the Convention of 1864, met on the 30th, for, as it alleged, the purpose of remodeling the present Constitution of the State. The leaders were political agitators and revolutionary men, and the action of the convention was liable to produce breaches of the public peace. I had made up my mind to arrest the head men, if the proceedings of the convention were calculated to disturb the tranquillity of the department, but I had no cause for action until they committed the overt act. In the mean time official duty called me to Texas, and the mayor of the city, during my absence, suppressed the convention by the use of the police force, and in so doing attacked the members of the convention and a party of two hundred negroes with fire-arms, clubs, and knives, in a manner so unnecessary and atrocious as to compel me to say that it was murder. About forty whites and blacks were thus killed, and about one hundred and sixty wounded. Everything is now quiet, but I deem it best to maintain a military suprem-

acy in the city for a few days, until the affair is fully investigated. I believe the sentiment of the general community is great regret at this unnecessary cruelty, and that the police could have made any arrest they saw fit without sacrificing lives.

P. H. SHERIDAN,

Major-General commanding.

General Sheridan adds :

“On receiving the telegram, General Grant immediately submitted it to the President. Much clamor being made at the North for the publication of the dispatch, President Johnson pretended to give it to the newspapers. It appeared in the issues of August 4th, but with this paragraph omitted, viz. :

“‘I had made up my mind to arrest the head men, if the proceedings were calculated to disturb the tranquillity of the department, but I had no cause for action until they committed some overt act. In the mean time official duty called me to Texas, and the mayor of the city, during my absence, suppressed the convention by the use of the police force, and in so doing attacked the members of the convention and a party of two hundred negroes with fire-arms, clubs, and knives, in a manner so unnecessary and atrocious as to compel me to say that it was murder.’”

General Sheridan adds: “Against this garbling of my report, done by the President’s own order, I strongly demurred, and this emphatic protest marks the beginning of Mr. Johnson’s well-known personal hostility toward me.”

It will be observed that the omission of this portion of the dispatch—this “garbling” done by President Johnson’s own order—changes its whole tenor and meaning; made General Sheridan say exactly contrary to what he did in fact say. Omitting the part struck out, and connecting the two sentences that come together, the President made the dispatch read: “The leaders were political agitators and revolutionary men, and the action of the convention was liable to produce breaches of the public peace. About

forty whites and blacks were *thus* killed, and about one hundred and sixty wounded."

Observe—this makes General Sheridan say that the action of the convention was liable to produce breaches of the public peace, and thus—in this wise—about forty whites and blacks were killed and about one hundred and sixty wounded. General Sheridan said nothing of the kind—nothing in the whole dispatch had any such implication or meaning. What he did say was that the mayor of the city "suppressed the convention by the use of the police force, and in so doing attacked the members of the convention and a party of two hundred negroes with fire-arms, clubs, and knives, in a manner so unnecessary and atrocious as to compel me to say that it was murder"; and "thus" by this means, by this mayor and his police, about forty whites and blacks were killed and about one hundred and sixty wounded.

Is it too much to say that a man who could do this wrong to General Sheridan—could mutilate and corrupt a dispatch so as to cause him to make a false report about a people over whom he was placed in Government; to cause him to state falsely the facts and circumstances about an event in which forty persons had lost their lives, and one hundred and sixty had been grievously wounded—would hesitate to state a falsehood about Judge Holt? Is it too much to say that a man who could do this, and then try to mislead and deceive the people of the United States as to this tragic event, about which they were clamoring to know the truth, perpetrating a lie upon them by mutilating and corrupting a dispatch and promulgating it as the true one, would hesitate to deceive the people about the fact as to whether he did or did not see the recommendation to mercy of Mrs. Surratt? Is it not fair to say that he was of such mental structure and moral fiber as to do this wrong?

And now the motive:

It is known of all men that Andrew Johnson had only fairly settled himself in the presidential chair of the great

Lincoln, before he began to dream, to scheme, and to intrigue for an election by the people to that office.

The presidential bee was buzzing under the accidental presidential hat. The Southern leaders, clever diplomats and long-headed politicians as they are, soon took the measure of the man, and began to consider how best they could use him and his ambition for their own purposes. It was noticed that Andrew Johnson had not been many months in the White House before there was a decided change in the style and type of visitors passing in and out under the great white portico. The men of the North—the old “Union Republican group” of the House and Senate that were daily visitors there in the days of Lincoln, began to find the atmosphere of the White House less kind and congenial; there was a lack of warmth in the welcome, and a constraint in talk and exchange of ideas, progressing gradually to actual antagonism over the questions of amnesty, reconstruction, and constitutional guarantees to the freedmen. Then the Northern men dropped away, seemed not to go there any more. Men from the South who but lately had borne arms against the Government, and who had not yet taken the oath of allegiance, were found plentiful about the White House, and apparently basking in the sunshine of presidential favor, as in the rays of a southern sun. It became the reign of the unreconstructed and unreconciled. Somebody had whispered loud enough for Mr. Johnson to hear—perhaps the bee buzzed it—that if the Southern States could be reconstructed previous to the presidential convention of 1868, and he (President Johnson) should be found friendly and faithful to the South in that work, there were fifteen Southern States whose electoral votes might be found solid for him as the Democratic nominee, and he would only need the votes of two or three Northern States in addition to carry off the nomination. You know how the poison took—how from the most radical of Union Republicans he became the most extreme—the leader—of the “strictest sect” of the Democrats; how the words “treason should be made odious”—“traitors should take back seats”

—"a few traitors should be hung," with which his mouth was filled when elected, and were still sounding in the air when he sat down in Lincoln's vacant chair, had hardly died away before he had turned against and upon all those who had upheld the Union cause—all his old Union friends; how he fought the Congress with a bitterness and a boldness unparalleled in history. He took issue with it on every measure by which the Congress sought to fix in statute and in the fundamental law what the sword had achieved, what war had enacted. Thus he stood.

And now turning to Mrs. Surratt and her case. Over her execution a great clamor was raised throughout the country, not only by those who were lately in rebellion, and those in the North who were in sympathy with that rebellion, but almost universally by the Roman Catholics of the country, she being a member of that Church, they believing her innocent and a martyr. Mr. Johnson heard this clamor, and "his startled ambition grew sore afraid." He bethought him of some means to turn this wrath away from himself. The press kept referring to the fact that a recommendation to mercy had been signed by a majority of the Court; and his new friends and allies were calling upon him with a loud voice to know why he had not heeded the appeal for mercy, and saved this hapless woman. His fears whispered that the storm might grow so fierce and strong as to sweep away his carefully constructed political fabric. How could he turn away this wrath and clamor; how turn the fury of the storm? Were here not motive and interest enough? He doubtless remembered that, when he examined the record, he and Judge Holt had been alone. How easy to shift the blame, to turn the storm of wrath and execration upon another head by having it circulated that the recommendation had been suppressed by Judge Holt, and that he had never seen nor heard of it up to the time of the execution! Here was a sufficient motive—the motive of ambition—the motive which, as we have seen, changed the whole nature of the

man—changed his political thought and attitude—spoiled the purpose of his life.

Of Judge Holt's life little need be said. Born and reared in Kentucky, of the best blood of the State, he had achieved fame and stood in the front rank with the great lawyers and orators of that State before the rebellion began, and before he was called to the Cabinet of James Buchanan, first as Postmaster-General, and afterward as Secretary of War, to fill the place made vacant by the retirement of the traitor John B. Floyd. Judge Holt was a man of collegiate education, a student and a scholar of wide and varied reading, and a rhetorician and logician second to few men in the country. Of the next generation after Henry Clay, he was of the time and type in intellectual grasp and power of the Marshalls, the Breckinridges, and the Crittendens of that State. He breathed in the spirit of loyalty, patriotism, and love of the Union of Clay, and never doubted, never swerved in giving all his powers—in dedicating his life to the work of saving the Union. It is related by the historian that at one of the Cabinet meetings of President Buchanan, when several of the Southern Secretaries were still occupying their places and were boldly demanding that the forts at Charleston should be evacuated, and Mr. Buchanan was too weak to take a position against them, Mr. Stanton, who had been called to fill the office of Attorney-General, sprang to his feet and said, "Mr. President, it is my duty, as your legal adviser, to say that you have no right to give up the property of the Government, or abandon the soldiers of the United States to its enemies, and the course proposed by the Secretary of the Interior, if followed, is treason, and will involve you and all concerned in treason!" For the first time in this Cabinet treason had been called by its true name. Floyd and Thompson, who had had everything their own way, sprang fiercely to their feet, while Mr. Holt sprang to Mr. Stanton's side indorsing his utterances and ready to uphold him in any struggle. Mr. Buchanan begged that there would be no violence, and for the gentlemen to resume their seats. Thus bolstered

by Mr. Stanton and Judge Holt, the President determined not to withdraw Major Anderson. Soon after this meeting Floyd resigned, and Judge Holt was appointed Secretary of War in his place.

Save this charge of Andrew Johnson, no stain or blot, nor the least spot or soilure, has ever rested upon the fair name and fame of Joseph Holt. For the last year or two of the war I was brought in close official and personal relations with him. I learned to know him well. He was most refined and sensitive in his nature, gentle and kindly in his intercourse and in all his relations with those about him, pure in his private life, exalted in his ideas and ideals, dignified, and courtly in his bearing, yet always thoughtful, considerate, and courteous. He had traveled much, read much, and held as his friends strongly attached to him the best men of the land. I can now as little associate him in my mind with the commission of a dishonorable action as any man I have ever known.

One of the interesting episodes connected with this charge against Judge Holt is his appeal to Mr. Speed, Mr. Lincoln's Attorney-General, to "speak out" and state the fact whether or not the recommendation to mercy was before President Johnson and his Cabinet and considered by them. The correspondence between Judge Holt and Mr. Speed is published in the North American Review for July, 1888. It will be remembered that Mr. Speed, in his letter to Judge Holt of March 30, 1873, had said :

"After the finding of the military commission that tried the assassins of Mr. Lincoln, and before their execution, I saw the record of the case in the President's office, and attached to it was a paper, signed by some of the members of the commission, recommending that the sentence against Mrs. Surratt be commuted to imprisonment for life; and according to my memory the recommendation was made because of her sex."

As I have heretofore said, this settled, so far as the testimony of James Speed could settle it, that the charge of Andrew Johnson that Judge Holt had withheld the recom-

mendation to mercy was false. It settled the fact that previous to the execution the recommendation to mercy was in the President's office, and was attached to the record. But in this letter Mr. Speed added: "I do not feel at liberty to speak of what was said at Cabinet meetings. In this case I know I differ from other gentlemen, but feel constrained to follow my own sense of propriety."

Judge Holt had learned, through the statements of Mr. Seward and Mr. Stanton to Judge Bingham, that the recommendation to mercy had been presented to the President, and had been considered by him and members of the Cabinet before the execution. But when this information came to him, both Mr. Seward and Mr. Stanton were dead, and the statement of Judge Bingham of what they told him was secondary evidence; and Judge Holt was anxious, therefore, to get the direct evidence of Mr. Speed that this recommendation was, to his personal knowledge, before Mr. Johnson and his Cabinet and considered by them. His appeals to Mr. Speed are pathetic in the earnestness and depth of feeling they reveal. What could be more profoundly sorrowful or touching than this, in his letter of April 18, 1883: "Allow me to add that we are now, each of us, far advanced in years, so that whatever is to be done for my relief should be done quickly. While, however, it is sadly apparent that I can remain here but a little while longer, I have not been able to bring myself to the belief that you will suffer the closing hours of my life to be darkened by a consciousness that this cloud, or even a shred of it, is still hanging over me—a cloud which can be dissipated at once and forever by a single word spoken by yourself in defense of the truth and in rebuke of a calumny, the merciless cruelty of which none can better understand than yourself. I make this final appeal to your honor as a man to do me the simple justice which, under the same circumstances, I would render to you at once and joyfully."

But Mr. Speed would not speak—finally saying, in his letter of October 25, 1883, "After very mature and deliberate consideration, I have come to the conclusion that I

can not say more than I have." Neither would he enter into consideration or discussion of his determination not "to speak of what was said at Cabinet meetings." It seems to me that Judge Holt was right and Mr. Speed was wrong in their relative positions upon this question. In his letter of April 18, 1883, addressed to Mr. Speed, to which I have referred, Judge Holt forcibly presents his view: "You were a member of his (President Johnson's) Cabinet, and I have the strongest reasons for believing that this atrocious accusation is known to you to have been false in its every intendment. It originated with President Johnson, and for years was industriously circulated by his unscrupulous abettors, though he did not dare make open proclamation of it until he felt assured, through your letter of the 30th of March, 1873, that no damaging disclosures were to be apprehended from yourself. . . . The question whether a President of the United States, as a craven refuge from accountability for official action, did seek to blacken the reputation of a subordinate officer holding a confidential interview with him, is in no just sense a private question; it is essentially a public one, which concerns the whole country, and one of which the country may well expect you to speak, seeing that you were a member of that President's Cabinet at the time of this disgraceful transaction. Your unwillingness thus to speak of it in 1873 seemed to have arisen from an exaggerated estimate of a rule which once prevailed with regard to the inviolability of Cabinet councils and secrets. But whatever may have been, in the remote past, the recognized force of this rule, the frequent and conspicuous disregard of it during the last two decades, by statesmen of the highest probity and rank, leaves the impression that the rule itself has lived its day and is now practically dead and inoperative. Waiving, however, this view, it is clear to me that, were the rule accepted as now binding in its utmost rigor, it could have no application to this case. I can not be misled in supposing that the relations between the President and his Cabinet are relations of honor, and that, therefore, they can not be held to oblige any member

of his Cabinet to protect, by his concealment, and thus become a moral accomplice in it—any criminal or wrongful act into which the President may be drawn by a guilty ambition, or by any other unworthy passion or purpose. In a word, the rule never has been and never should be so construed as to become a shelter for perjury or crime. . . .

“Your associates in the Cabinet—Messrs. Seward and Stanton—condemning the rule by which I have been so long victimized, declared the truth fully to Judge Bingham, as he has so forcibly set forth in his letter to which you are referred.”

But, as I have said, Mr. Speed would not speak. I can only account for it by the life, circumstances, and education of the man. In the old slave States, in the *ante-bellum* days, there existed many of the ideas, traditions, and rules of personal conduct of the feudal times. Things touching personal honor, or trusted to it, or that partook of the knightly and chivalrous, were esteemed above common right, common honesty, or common sense. Restrained by these limitations of birth and tradition, and controlled by his chivalrous idea of not revealing what he regarded as Cabinet secrets, Mr. Speed would not speak, even to save a public officer from a great wrong, or his personal friend from a calumny which he knew would walk beside him shadowing and embittering a life, noble and void of wrong, down to its close. In this I think the judgment of mankind will be that he erred. He knew that this charge of Andrew Johnson was a cruel falsehood. Not only what he said, but what he refused to say, proves this. His letter of March 30, 1873, states that he saw the record, with the recommendation attached to it, in the President's office before the execution. Judge Holt did not, therefore, “withhold,” as the President alleged. But, stronger than this, and conclusive, I believe, in the mind of every honest and unprejudiced man, were Mr. Speed's utterances less than two years ago at a meeting of the Loyal Legion at Cincinnati. Mr. Speed read a paper at the meeting of this society, held there on the 4th of May, 1887, in which he said :

“Only the group of fiends who stilled the pulsations of Lincoln’s great heart paid the penalty of the crime. A maudlin sentiment has sought to cast blame on the officials who dealt out justice to these. One in particular is my distinguished friend the then Judge-Advocate-General of the army. Judge Holt performed his duty kindly and considerately. In every particular he was just and fair. This I know; but Judge Holt needs no vindication from me nor any one else. I only speak because I know reflections have been made, and because my position enabled me to know the facts, and because I know the perfect purity and uprightness of his conduct.” Could any words say in stronger form, he knew that in this matter Judge Holt did his whole duty, and that President Johnson’s charges were false? Could he have said, “In every particular he was just and fair, this I know,” if he did not *know* and intended to say that he knew Judge Holt did his whole duty and had presented this recommendation to mercy to President Johnson? But what he refused to say is as strongly convincing to my mind of the fact that the recommendation to mercy was, to his knowledge, duly brought to the President’s attention, and was read and considered by him and members of his Cabinet, as anything he has affirmatively stated.

He was asked by Judge Holt to state whether this paper was or was not before President Johnson and his Cabinet. He refused to answer, “because he did not feel at liberty to speak of what was said at Cabinet meetings.” If nothing was said about the recommendation, if no such paper ever came before the Cabinet, might he not have so stated; might he not have said, “No such matter ever came before the Cabinet”? This would not reveal any Cabinet secret, would come nowhere near the limitations he had prescribed for himself “not to speak of what was said at Cabinet meetings.”

Is it not the inevitable logical conclusion that it was because of this knowledge that this recommendation had been before and had been discussed by the President and

his Cabinet, and his determination "not to speak of what was said at Cabinet meetings," that he would not speak?

But finally, my friends, has not the faith of Judge Holt been realized? Has not time caused the truth to shine forth and his innocence to appear? In 1873 he said: "An abiding faith, however, remains with me that the public will do these witnesses justice, and myself also; and that if truth has power to disarm the cloud of calumny of its lightnings, that then, standing in their presence and under their shelter, I may well feel that for the future this cloud can have no terrors for me."

Saith the old poet:

". . . I have ever thought
Nature doth nothing so great for great men
As when she's pleased to make them lords of truth.
Integrity of life is fame's best friend,
Which nobly beyond death shall crown the end."

The Library Committee of the New York Commandery, Military Order Loyal Legion, cordially invite their comrades to contribute from their collections such volumes of military and naval history and biography as they can conveniently spare, and to send the same to the office of the Commandery, No. 140 Nassau St., New York. The Committee particularly desire that the Library should possess copies of all books of any character which have been written by Companions of the Order. These and all other gifts will be duly acknowledged by letter and in the circulars of the Commandery.